

Message Text

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C O N F I D E N T I A L SECTION 1 OF 2 MONTEVIDEO 0568

E.O. 11652: GDS
TAGS: PGOV, UY
SUBJ: HONOR TRIBUNALS PROPOSED TO WATCHDOG PROFESSIONS

1. BEGIN UNCLASSIFIED. SUMMARY. URUGUAY'S COUNCIL OF STATE WAS RECENTLY CALLED INTO SPECIAL SESSION TO CONSIDER ESTABLISHING "HONOR TRIBUNALS" TO WATCHDOG THE PERFORMANCE OF MEMBERS OF THE COUNTRY'S PROFESSIONS. EACH PROFESSION WOULD HAVE ITS OWN TRIBUNAL, OPERATING UNDER THE AUSPICES OF THE MINISTRY OF JUSTICE, TO BE COMPOSED OF FIVE MEMBERS, WHOSE SELECTION WILL BE DOMINATED BY THE EXECUTIVE POWER. THE TRIBUNALS, PATTERNED AFTER THE URUGUAYAN MILITARY MODEL, WILL HAVE COMPETENCE TO CONSIDER "ALL THINGS WHICH AFFECT OR ARE AFFECTED BY, THE PRESTIGE AND HONOR OF A PROFESSION AS A WHOLE, OR ONE OF ITS MEMBERS". ALTHOUGH THEY ARE NOT PART OF THE LEGAL SYSTEM, THE TRIBUNALS WILL HAVE THE POWER TO COLLECT INFORMATION, SUMMON WITNESSES, HEAR TESTIMONY AND PASS SENTENCE (WHICH, IN THE EXTREME CASE, CAN BAR A MEMBER OF A PROFESSION FROM PRACTICING FOR UP TO FIFTEEN YEARS). THE TRIBUNALS HAVE BEEN PROMOTED HEAVILY IN THE LOCAL PRO-GOVERNMENT PRESS, AND INDEPENDENT EL DIA HAS RUN TWO WELL-REASONED AND COMPREHENSIVE EDITORIALS AGAINST THEM, SO THAT BOTH SIDES OF THE ISSUE ARE BEING THOROUGHLY PUBLICIZED. END SUMMARY.

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2. THE EXECUTIVE POWER RECENTLY CALLED THE COUNCIL OF STATE BACK FROM ITS RECESS EARLY SO THAT IT COULD CONSIDER A PROPOSAL TO ESTABLISH "HONOR TRIBUNALS" TO MONITOR THE BEHAVIOR OF THE MEMBERS OF URUGUAY'S PROFESSIONS. THIS WOULD ENCOMPASS ALL FIELDS FOR WHICH UNIVERSITY TRAINING AND THE CORRESPONDING SPECIALIZED DEGREE ARE REQUIRED, E.G., LAW,

ARCHITECTURE, ETC. THE ISSUE IS CURRENTLY BEFORE THE COUNCIL OF STATE'S CONSTITUTION AND LEGILATION COMMITTEE.

3. THE PROPOSED HONOR TRIBUNALS, PATTERNED AFTER MODELS CURRENTLY USED BY URUGUAY'S MILIARY, POLICE AND DIPLOMATIC CORPS, WOULD BE COMPOSED OF FIVE MEMBERS, TO BE DESIGNATED AS FOLLOWS: THE PRESIDENT OF THE TRIBUNAL TO BE SELECTED BY THE EXECUTIVE POWER; THE VICE PRESIDENT TO BE NOMINATED BY THE UNIVERSITY OF THE REPUBLIC AND DESIGNATED BY THE EXECUTIVE POWER; AND THE REMAINING THREE MEMBERS TO BE CHOSEN BY THE EXECUTIVE POWER FROM A LIST OF TEN NOMINEES SUBMITTED BY THE LEGALLY RECOGNIZED PROFESSIONAL ASSOCIATION FOR EACH TRIBUNAL.

4. THE TRIBUNALS WOULD HEAR CASES AT THE REQUEST OF THE MINISTRY OF JUSTICE, INDIVIDUAL COMPLAINANTS OR THE GOVERNING BODIES OF THE PROFESSIONAL ASSOCIATIONS. THEY WOULD BE COMPETENT TO "CONSIDER ALL ISSUES WHICH CAN EFFECT, OR CAN BE AFFECTED BY, THE PRESTIGE AND HONOR OF A PROFESSION AS A WHOLE OR OF ONE OF ITS MEMBERS". THE JUDGEMENTS OF THE TRIBUNAL WOULD BE LIMITED TO THE "MORAL ASPECTS" OF A CASE, AND THEY WOULD BE LIMITED TO MAKING FINDINGS OF FACT, NOT OF LAW.

5. IN ORDER TO FACILITATE THE WORK OF THE TRIBUNAL, THEY WOULD BE EMPOWERED TO COLLECT INFORMATION AND SUMMON BOTH CONFIDENTIAL

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EXPERT WITNESSES AND WITNESSES TO FACTS. RECALCITRANT WITNESSES COULD BE COMPELLED TO APPEAR BY THE POLICE. IN ADDITION, ALL GOVERNMENT BODIES, THE COURTS AND THE POLICE WOULD BE REQUIRED TO ASSIT THE TRIBUNALS BY PROVIDING INFORMATION WHEN NEEDED.

6. THE TRIBUNALS WOULD HAVE THE POWER TO ABSOLVE THE DEFENDANT OF ALL GUILT OR, ALTERNATIVELY, CENSURE, WARN OR BAR HIM FROM PRACTICING HIS PROFESSION FOR UP TO 15 63-4 . THIS LAST ACTION WOULD REQUIRE THE UNANIMOUS DECISION OF THE TRIBUNAL. THE EXECUTIVE POWER WOULD CERTIFY THE DECISIONS OF THE TRIBUNALS AND SEE TO THEIR IMPLEMENTATION.

7. THE EXECUTIVE POWER WOULD DECIDE ON A CASE-BY-CASE BASIS WHETHER THE FINDINGS OF THE TRIBUNALS WOULD BE PUBLICIZED. IN NO CASE, HOWEVER, WOULD PUBLIC DISCUSSION OR COMMENT ON A CASE BE PERMITTED.

8. PRO-GOVERNMENT PAPERS CARRIED THE ANNOUNCEMENT OF THE PROPOSED TRIBUNALS PROMINENTLY. INDEPENDENT EL DIA, IN THE DAYS FOLLOWING THE ANNOUNCEENT, RAN TWO MAJOR EDITORIALS CRITICIZING THE PROPOSAL ON THE GROUNDS THAT IT: (1) FAILS

TO PROVIDE DUE PROCESS AND RIGHT OF APPEAL IN WHAT IS
ESSENTIALLY A PUNITIVE PROCESS; (2) CREATES AND INAPPROPRIATE
DOMINANCE BY THE MINISTRY OF JUSTICE OVER WHAT SHOULD BE AN
INTERNAL ORGAN OF THE INDIVIDUAL PROFESSIONS; AND (3) CREATES
A VAGUE AND DANGEROUSLY BROAD MANDATE FOR THE TRIBUNALS AND
GIVES THEN QUASI-JUDICIAL AUTHORITY THROUGH GOU IMPLEMEN-
TATION OF THEIR DECISIONS. END UNCLASSIFIED.

9. BEGIN CONFIDENTIAL. COMMENT: EL DIA'S ONJECTIONS GO
RIGHT TO THE CORE ISSUES. THIS PROPOSAL CLEARLY VIOLATES
GENERALLY ACCEPTED LEGAL NORMS OF DUE PROCESS AND RULES OF
EVIDENCE. IT PERMITS A NON-JUDICIAL BODY, FROM WHICH THERE
IS NO RIGHT OF APPEAL, TO IMPOSE ON THOSE ADJUDGED TO BE
GUILTY OF A BREAHH OF PROFESSIONAL ETHICS, THE TYPE OF
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SERIOUS PUNITIVE SANCTIONS NORMALLY RESERVED FOR CRIMINAL
BEHAVIOR. THE HEAVY-HANDEDNESS OF THE PROPOSAL IS SURPRISING.
THERE IS NO APPARENT PROBLEM OF SERIOUS OR WIDE-SPREAD UNETHICAL
PROFESSIONAL CONDUCT, NOR IS THERE SIGNIFICANT POPULAR

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SUPPORT FOR SUCH A DRACONIAN MEASURE. SOME OF THE
PROFESSIONAL ASSOCIATIONS ALREADY HAVE PROCEDURES FOR
CENSURING UNETHICAL OR UNPROFESSIONAL CONDUCT. IN ADDITION,
THE CIVIL CODE ALREADY CONTAINS A PROVISION WHEREBY THE COURTS
CAN BAR A PROFESSIONAL FROM PRACTICING.

10. WE SUSPECT THAT THIS PROPOSAL ARISES PRIMARILY FROM THE POLITICAL, IDEOLOGICAL AND NATIONAL SECURITY PREJUDICES OF THE GOU'S EXTREME RIGHT WING. IT EMERGED FROM THE MILISTRY OF JUSTICE WITH THE SUPPORT OF THE PRESIDENT, WHO ARE BOTH NOTED FOR THEIR RIGHTEST ORIENTATION AND THEIR DESIRE TO CONVERT URUGUAYIINTO A CORPORATE STATE. THE "HONOR TRIBUNALS" CONCEPT IS ALSO CONSISTENT WITH THE THINKING OF MILITARY HARDLINERS. IT SERVES THEIR OFTEN-STATED INTENTION, STEMMING FROM THE ACTIVE INVOLVEMENT OF AMNY PROFESSIONALS IN THE TUPAMARO AND OTHER SUBVERSIVE MOVEMENTS, TO "CLEANSE" THE PROFESSIONS AND TO ASSURE THAT THEY CAN BE MONITORED, RESTRAINED AND INTIMIDATED IN THE FUTURE.

1. ON THE POSITIVE SIDE, OTHER EXAMPLES OF AUTHORITARIAN OR ABERRANT LEGISLATION REFERRED FOR STUDY TO THE COUNCIL OF STATE HAVE DIED QUIETLY, FREQUENTLY BY BEING STUDIED TO DEATH. SUCH WAS THE FATE OF THE PATENTLY UNCONSTITUTIONAL LEY DE PELIGROSIDAD, FOR EXAMPLE, WHICH WOULD HAVE MADE CONFIDENTIAL

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PERSONS WHO HAD COMMITTED NO CRIME, BUT WERE JUDGED TO BE DANGEROUS, LIABLE TO ARREST. THE COUNCIL OF STATE CONTAINS SEVERAL SKILLED CONSTITUTIONAL LAWYERS FAMILIAR TO THIS EMBASSY, AND THE UNIVERSITY OF THE REPUBLIC HAS EXPRESSED INTEREST IN PARTICIPATING IN THE COUNCIL'S DEBATES, SO THE FATE OF THE PROPOSAL IS STILL UNCERTAIN. BOTH OF THESE LIBERAL INFLUENCES ARE EXPECTED TO HAVE SOME MODERATING EFFECT.

12. GIVEN ITS RIGHT-WING ORIGINS AND ITS APPEARANCE DURING THE FIRST WEEKS OF GENERAL ALVAREZ' TENURE AS ARMY CINC, THE PROPOSAL PRESENTS A CHALLENGE TO HIM. IT IS CLEARLY CONTRARY TO HIS PURPORTED COMMITMENT TO OPEN UP THE SOCIETY AND TO ALLEVIATE THE RESTRICTIONS ON ITS CITIZENS. IT WILL BE INTERESTING TO SEE HOW ALVAREZ, IN CONJUNCTION WITH THE COUNCIL OF STATE AND THE UNIVERSITY OF THE REPUBLIC, RESPONDS TO THIS ISSUE.
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